

**CITY OF BEAVERTON  
STAFF REPORT AND RECOMMENDATION**

**TO:** Planning Commission

**STAFF REPORT DATE:** Wednesday, January 4, 2006

**STAFF:** Steven A. Sparks, AICP, Development Services Manager

**SUBJECT:** **TA 2004-0012 (TC-MU Commercial Restriction)**

**REQUEST:** Proposal to amend Development Code Section 20.20.30.2.D.3. to create an alternative retail trade use restriction that would allow individual retail use footprints to up to 90,000 square feet.

**APPLICANT:** Gramor Development, Inc.  
19767 SW 72<sup>nd</sup>., Suite 100  
Tualatin, OR. 97062

**AUTHORIZATION:** Ordinance 2050 (Development Code)

**APPLICABLE CRITERIA:** Ordinance 2050, Section 40.85.15.1.C.1-7 (Text Amendment Approval Criteria)

**HEARING DATE:** Wednesday, January 11, 2006

**RECOMMENDATION:** Take public testimony on the proposed text amendment application **TA 2004-0012** (TC-MU Commercial Use Restriction Amendment) and forward a recommendation to the City Council.

Forward a recommendation of **denial** to the City Council on the proposed **development agreement**.

## **A. LEGISLATIVE HISTORY**

Gramor Development Inc. (Gramor) is proposing a text amendment to Development Code Section 20.20.30.2.D.3.d. which will create an alternative to the current restriction limiting individual retail commercial uses to a maximum 50,000 square foot print unless it is on a site that is three (3) acres or less and surrounded on three (3) sides by public or private streets.

Development Code Section 20.20.30.2.D.3.d was adopted as part of TA 980009, Murray Scholls Town Center Text Amendment, in 1999. At that time the Murray Scholls Town Center Text Amendment established three (3) new multiple use zoning districts in order to be in compliance with Metro's 2040 Growth Concept and Urban Growth Management Functional Plan. In 1995 Metro Council, working with the City of Beaverton, established the Murray Scholls Town Center during the development of the 2040 Growth Concept. Metro's 2040 Growth Concept was developed in conjunction with all of the region's local governments as a response on how to plan future growth. Mixed-use urban centers inside the urban growth boundary are one key element to the 2040 Growth Concept. The 2040 Growth Concept seeks to achieve the desired compact urban form in 2040 using some of the following techniques:

- Using land more wisely through infill and redevelopment, emphasizing higher density and mixed-use development in key centers and corridors;
- Focusing jobs and shopping closer to where people live; and,
- Connecting mixed-use development with expanded transportation choices including transit, bicycle, and pedestrian oriented development.

The Murray Scholls Town Center Text Amendment was based on a State funded Transportation and Growth Management Grant study entitled Murray Scholls Town Center Planning Study. This study was developed with the participation of the Murray Scholls Town Center Planning Advisory Committee. The Committee comprised local citizens, property owners, developers, and representatives of local agencies such as Metro and Tri-Met. The Murray Scholls Text Amendment was recommended for adoption by the Committee to the Planning Commission and City Council. The Planning Commission held several public hearings and made a final recommendation of approval to the City Council on May 14, 1999. During the Commission's review of the Murray Scholls Town Center text amendment, Gramor requested that a parcel under their ownership be removed from the Town Center area due to their disagreement with the content of the Town Center zoning requirements. The Commission agreed to remove the Gramor parcel from the Town Center. The City Council held its own public hearing and adopted the Murray Scholls Text Amendment on August 16, 1999.

The Development Code Text that was recommended by the Murray Scholls Town Center Planning Advisory Committee, the Planning Commission, and ultimately adopted by the City Council sought to create a new vision and move development that occurred within the new Town Center from the existing suburban commercial retail strip center and large format “big box” trends of auto depended uses to a development that is a more human scaled environment that serves as a point of community gathering that is accessed by a many modes of transportation while remaining accessible by automobile. While the existing Development Code text does not prevent a big box development from occurring, it does limit the location of big box development. In this case, a retail use in excess of 50,000 square feet could be developed but on a parcel bounded on three (3) sides by streets and the parcel could not exceed three (3) acres in size. It was intentional to limit the area of the parcel in order to prevent the stereotypical “sea of parking” and encourage structured parking. This promotes a more pedestrian oriented environment and less automobile oriented environment.

At the time of adoption of the Murray Scholls Town Center text amendment in 1999, there was only a single parcel which received the Town Center - Multiple Use (TC-MU) zoning designation. Since that time, a second area of the City has received the TC-MU zoning designation to which the proposed amendment will be applicable. The proposed text amendment will also have an effect on approximately 18.50 acres of the Teufel Nursery site that is zoned TC-MU. The Teufel property was annexed from Washington County in 2004 with a Washington County zoning designation of Transit Oriented-Retail Commercial. Based on the Urban Planning Area Agreement, the City is required to zone the property to the most analogous zone. Therefore, the site received the TC-MU zoning district designation after the processing of a Zoning Map Amendment application. The City Council adopted by Ordinance 4293 special design standards for the Teufel Town Center area that were prepared by Washington County for the Cedar Mill Town Center Plan which are intended to create a “vibrant mixed-use pedestrian-friendly development” for the future development of the Teufel Nursery.

Development Code Section 20.20.30 and the other portions of the TC-MU zoning standards were developed with the help of private sector consultants in order to create the best place with the community’s vision for the Murray Scholls Town Center. The text was not created to simply facilitate the construction of the next development project that may be proposed for the area. So a fundamental question for the Planning Commission is; should the Development Code be a document which implements the community’s vision for the type of place the citizens want live, work, and recreate within, or should the Code be amended to respond to the kind of development project that may receive financing today.

## **B. PROJECT HISTORY**

Gramor submitted the proposed text amendment on December 23, 2004. The proposed amendment was substantially from the current text amendment proposal. The original proposal created an alternative to meeting the subject use restriction by proposing to add text which outlined a series of design expectations for a development which would not meet the 50,000 square foot size limitation. The proposed text amendment was scheduled for the April 20, 2005 Planning Commission meeting. The staff report prepared for that meeting recommended denial of the proposed text amendment. Upon receipt of the staff report, Gramor requested a continuance of the application. As the application is a legislative amendment, the 120 day clock rule is not applicable.

Since April 2005, Gramor and staff have discussed options on how to proceed with changing the code to allow their proposed commercial development of a parcel in the Progress Quarry area. The option put forward by Gramor is to amend the code to allow an applicant to either meet the Code by complying with the 50,000 square foot size use restriction or enter into a development agreement with the City. The result of the development agreement would be to allow an applicant to deviate from the Code use restriction.

As envisioned by ORS 94.504, a development agreement is simply an agreement between the City and at least one other party for the development of a parcel(s). The topic for a development agreement is wide open, and as stated in the applicant's materials, development agreements can provide flexibility for the development of a parcel. Gramor proposes to add the text specified above to provide them with the flexibility to develop the property in which they have an interest in a manner which does not meet the use restrictions of the current Code.

By State Statute, a development agreement is a land use decision and is subject to land use processes. The City Council is the party which enters into a development agreement with another party. This is done in a public hearing and the City's practice has been to follow the Type 3 application public noticing procedure for the Council's hearing. In this case, because the proposed text amendment is accompanied by a development agreement for a specific development proposal, the Mayor has requested that the Planning Commission review the development agreement and provide a recommendation to the City Council. In Section D of this report, staff have prepared a response to each specific item in the proposed development agreement.

Because a development agreement is a land use decision, opportunity for public involvement in the review and decision on a proposed development agreement will continue to exist. While a development agreement will typically contain specific requirements or performance expectations of a development proposal, it does not

necessarily preclude the need of the more traditional development review process such as the City's consideration of a Design Review application. However, that is dependent upon the content of a development agreement.

### C. STAFF OVERVIEW OF PROPOSED TEXT AMENDMENT

The current proposed text amendment reads as follows, with the new text highlighted:

Section 20.20.30.2.D.3.

- d. Individual uses larger than 50,000 square feet are not permitted except:
1. ~~where the site is~~ on those parcels which are less than three net acres in size as formed by a grid of public or private streets on all sides, or
  2. When the City and the applicant have entered into a Development agreement pursuant to ORS 95.504 et. seq. which assures the City that the applicant's proposal will be consistent with the Purpose for Multiple Use Districts set forth in 20.20.1 as more specifically applied in the TC-MU district. Such Development Agreements may allow modification of any development standards contained in other provisions of the Development Code.

In the TC-MU zoning district, Commercial School, Retail, and Service uses are subject to the use restriction proposed for amendment. Gramor has a retail use which will be larger than 50,000 square feet of a parcel larger than three net acres. Therefore, their narrative is directed primarily at retail uses.

The proposed text amendment does not eliminate the existing use requirement limiting the size of individual retail uses. The amendment will provide an applicant the opportunity to enter into a development agreement with the City to develop an use which is subject to the use restriction. The amendment does not place an obligation on the City to enter into a development agreement with any party. Entering into such an agreement is at the sole discretion of the City Council.

In deliberating the proposed text amendment, the Commission should consider the fact that State Statute places a life span on development agreements. The applicant has provided a copy of ORS 94.504 in their text amendment narrative. ORS 94.504 was slightly modified during the last legislative session and that amendment became effective January 1, 2006. The change is that any development agreement entered into with a City has a life span of a maximum of fifteen (15) years. The citation in the application narrative refers to four (4) years for fewer than seven (7) lots or seven (7) years for seven (7) or more lots.

If the City were to enter into a development agreement with certain performance expectations, the parties to the agreement would have up to 15 years to meet those expectations. The question to consider is what happens if the performance expectations are not met? Section 10.70.9 of the Development Code states that the City will notify the party is in breach or default of the agreement and then may deny any application for land use or building permits on the subject property because of the breach or default of the development agreement. Is that enough of an enforcement tool or is it too severe? For example, a development agreement requires the provision of a minimum amount of parking and the other party provides something less than the minimum amount in the agreement. The other party is content with the amount of parking, does not intend to provide the additional parking, and the development agreement expires. The City would rely on Section 10.70.8 and not issue any additional land use or building permits. If the other party is content with the amount of development on the site, then the withholding of permits would not be an inducement to meet the performance expectations of the development agreement.

Staff do not have a recommendation of approval or denial for the proposed text amendment with the exception of one portion of the amendment. However, staff are opposed to the inclusion of the last sentence of subsection 2 of the proposed text. Staff have negotiated with Gramor since April 2005 focusing on the size of use restriction. The last sentence would allow the use of a development agreement to modify or avoid any development standard found in the Code. This is not what was published in the public notice. If the public notice did describe that the proposed text amendment would allow development agreements to be used for modifying any development standard, staff would be opposed to such a proposal. Staff suggest that the purpose of the Development Code is to provide a level of certainty for all stakeholders in the City as to the expectations for development from building heights to uses allowed in each zone. By allowing any standard to be subject to a development agreement, no property owner would be certain what could be developed adjacent to their property regardless of the amount of due diligence that a property owner may undertake.

If the Planning Commission were to recommend to the City Council approval of a text amendment, staff recommend that the last sentence of subsection 2 of the proposed text be deleted and that the following text be forwarded to the Council.

Section 20.20.30.2.D.3.

d. Individual uses larger than 50,000 square feet are not permitted except:

1. ~~where the site is~~ on those parcels which are less than three net acres in size as formed by a grid of public or private streets on all sides, or

2. When the City and the applicant have entered into a Development agreement pursuant to ORS 95.504 et. seq. which assures the City that the applicant's proposal will be consistent with the Purpose for Multiple Use Districts set forth in 20.20.1 as more specifically applied in the TC-MU district.

#### **D. FACTS AND FINDINGS - Conformity to Text Amendment Approval Criteria**

Section 40.03. of the Development Code states that Type 4 applications are subject to the Facilities Review Committee approval criteria contained in Section 40.03.1 through 11 and that the decision making authority shall make findings of fact, based on evidence provided by the applicant, that all of the criteria specified in Section 40.03.1 through 11 are satisfied. The applicant has prepared a response to these approval criteria in their narrative. Staff do not have anything to add to the applicant's suggested findings to the approval criteria found in Section 40.03.1 through 11. The applicant's findings are found on pages 5 through 8 of their text amendment narrative materials.

Section 40.85.15.1.C of the Development Code specifies that in order to approve a Text Amendment application, the decision-making authority shall make findings of fact, based on evidence provided by the applicant, that all of the criteria specified in Section 40.85.15.1.C.1 through 7 are satisfied. The applicant has prepared a response to these approval criteria in their narrative. With the exception of approval criterion 5, staff do not have anything to add to the applicant's suggested findings to the approval criteria found in Section 40.03.1 through 11. The applicant's findings are found on pages 8 through 28 of their text amendment narrative materials.

Approval criterion 5 which reads as follows:

5. *The proposed text amendment is consistent with other provisions within the City's Development Code.*

The applicant recommends a finding that the proposed amendment is consistent with the approval criterion 5 because it is limited to Section 20.20.30.2.D.3.d. However, the last sentence of the proposed subsection 2 states that any development standard in the Code could be modified by a development agreement. Therefore, the proposed amendment is not limited to Section 20.20.30.2.D.3.d. Staff recommend the removal of the last sentence of subsection 2 of the proposed text.

## **F. CONFORMANCE WITH STATEWIDE PLANNING GOALS**

Because the proposal is for a text amendment to the Development Code, a demonstration of compliance with the Statewide Planning Goals is not required. ORS 197.225 requires that Statewide Planning Goals only be addressed for Comprehensive Plan Amendments. Nevertheless, staff make it a practice to review the Statewide Planning Goals as useful tool to ensure that the proposed amendments remain consistent with the City's position on the proposed amendments. The proposed text amendment's conformance to relevant Statewide Planning Goals is briefly discussed below:

### **GOAL ONE - CITIZEN INVOLVEMENT**

*To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.*

The City is in compliance with this Statewide Planning Goal through the establishment of a Committee for Citizen Involvement (CCI). The City has gone even further by establishing Neighborhood Association Committees (NACs) for the purpose of providing widespread citizen involvement and distribution of information. The proposed text amendment to the Development Code will not change the City of Beaverton's commitment to providing opportunity for citizen involvement, or place the City out of compliance with Statewide Planning Goal One. The City fulfilled its obligation to public notification efforts for the proposed text amendments. All public notices required by State Statute and by the City's Development Code for the subject text amendment application have been provided.

### **GOAL TWO - LAND USE PLANNING**

*To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.*

The City of Beaverton has adopted a Comprehensive Plan that includes text and maps (Ordinance 1800, and most recently amended by Ordinance 4187) along with implementation measures such as the Development Code (Ordinance 2050, effective through Ordinance No. 4295). These land use planning processes and policy framework form the basis for decisions and actions, such as the subject text amendment proposal. The proposed Development Code amendment has been processed in accordance with Section 40.85 (Text Amendment) and Section 50.50 (Type 4 Application) of the Development Code. Section 40.85 contains specific approval criteria for the decision-making authority to apply during its consideration of the text amendment application. Section 50.50 (Type 4 Application) specifies the minimum required public notice procedures to insure public input into the decision-making process. The City of Beaverton's Comprehensive Plan is consistent with Statewide Planning Goal 2.



## GOAL TWELVE - TRANSPORTATION

In order to address the requirements of Statewide Planning Goal 12, the Land Conservation and Development Commission has adopted the Oregon Transportation Planning Rule (Oregon Administrative Rules, Chapter 660, Division 12). Certain portions of the Transportation Planning Rule apply to comprehensive plan amendments and zone changes whereas other portions apply to development actions. The applicable sections that apply to land use amendments (660-12-060(1)). The applicable section is:

*660-12-060(1) Amendments to functional plans, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of service for the facility.*

The proposed text amendment could weaken the intended development intensity of the site by creating a more traditional auto-oriented development pattern within the Town Center-Multiple Use zone. By creating an alternative to the existing code size limitation which would allow for a large format “big box” retailer to build a more traditional store, vehicular, pedestrian, and bicycle connections points could potentially be spread out thus creating a less desirable walk and bicycling environment. Creating a less desirable walking environment does not support the reduction of vehicle trips as required by the Transportation Planning Rule.

Therefore, staff suggest that the Planning Commission discuss this issue and determine if the amendment would meet the Transportation Planning Rule.

### **G. STAFF OVERVIEW OF PROPOSED DEVELOPMENT AGREEMENT**

Pursuant to the proposed text amendment, Gramor has submitted a proposed development agreement for the development of an approximately 14 acre parcel at the NW corner of the intersection of Barrows Road and Horizon Boulevard. The site is zoned TC-MU and if TA 2004-0012 is approved, Gramor could enter into a development agreement with the City to develop the site with an individual retail use larger than 50,000 square feet and on a parcel larger than three (3) acres. Gramor has submitted the development agreement and an accompanying justification narrative for the Commission's consideration.

The City Council has the sole authority within the City to enter into any development agreement. Because the proposed text amendment is accompanied by a proposed development agreement, the Mayor has requested that the Planning Commission review the development agreement and provide a recommendation to the City Council on the proposed agreement. Since April 2005, staff have discussed the content of the proposed development agreement with Gramor. The development

agreement only applies to the parcel north of Barrows Road. The attached graphics show a parcel south of Barrows Road and show a development scheme for that parcel. The southern parcel is not a part of the proposed development agreement. Staff have only two issues within the development agreement which staff cannot recommend support.

The first issue concerns floor area. Pursuant to Section 20.20.50.D.5.A. the minimum floor area ratio (FAR) for the TC-MU zone is 0.50. If a development is a part of a PUD or a Design Review Build-Out Concept Plan, the minimum FAR is 0.35. Staff have been told by Gramor that a 0.50 FAR means that structured parking must be provided since there will not be enough parcel area left to provide adequate surface parking for retail uses. Gramor has shown that the ultimate build out of the subject site, after two (2) phases of construction, would be 0.50 FAR. Staff do not have an issue with the final build out FAR. The proposed FAR for the initial phase of development is approximately 0.41. Through negotiations with Gramor, staff had agreed to a FAR of 0.43 with the initial phase of development. This FAR could be achieved by enclosing the proposed Fred Meyer garden center (in a manner similar to the Home Depot garden center) or by building a separate 10,000 square foot building on the subject site. Staff suggest that the Commission should discuss the timing of the initial construction of the FAR. Should there be a provision requiring the obtaining building permits for all of the initial phase of development at the same time?

The second issue concerns the roof of the proposed 90,000 square foot building. Due to the topography of the subject site and surrounding area, staff have been very concerned with the amount of roof area that will be visible to the emerging community which will be located above the roof elevation. The existing Code allows an individual retail use of 50,000 square feet. Therefore, staff have taken the position that at least 40,000 square feet of the proposed 90,000 square feet of roof needs to be screened from view in some manner. Gramor has proposed planting mature trees along the north elevation to assist in screening the roof, although this is not specifically identified in the text of the development agreement. Further, Gramor has proposed placing partitions on the roof to assist in screening equipment and break up the viewed plane of the roof. Staff recommend that these treatments are inadequate to address the concern about the view of the roof area of the 90,000 square foot building.

## **H. STAFF RECOMMENDATION(S)**

Staff offer the following recommendation for the January 11, 2006 public hearing for TA 2004-0012 (TC-MU Commercial Use Restriction Amendment):

1. Open the public hearing.
2. Receive all public testimony.

3. Close the public hearing.
4. Considering the public testimony and the facts and findings presented in the staff report, deliberate on policy issues identified in the report and other issues identified by the Commission or the public.
5. Reach consensus on a recommendation on text amendment application TA 2004-0012 (TC-MU Commercial Use Restriction Amendment) and forward that recommendation to the City Council.
6. Recommend denial of the proposed development agreement to the City Council.

## **I. EXHIBITS**

- Exhibit 1 Murray Scholls Town Center Vicinity Map
- Exhibit 2 Cedar Hills Teufel Property Town Center Vicinity Map
- Exhibit 3 Gramor Development Text Amendment Narrative with Proposed Text Amendment
- Exhibit 4 Proposed Development Agreement dated December 16, 2005
- Exhibit 5 Development Agreement Justification narrative
- Exhibit 6 Letter Correspondence
  - 6.1 Jeffrey G. McCombs dated received November 2, 2005
  - 6.2 Sarah Yahna dated received November 8, 2005
  - 6.3 Jason Yahna dated received November 9, 2005
  - 6.4 Sandee Coumes dated received November 14, 2005
  - 6.5 Mark and Tiffany Poulin dated received November 14, 2005
  - 6.6 Victoria and Charles Pontrelli dated received November 15, 2005
  - 6.7 Bill Trubits dated received November 28, 2005
  - 6.8 Bill Hever dated received December 1, 2005
  - 6.9 John M. Jacobson dated received December 21, 2005
  - 6.10 Suzanne Unrein dated received December 21, 2005
  - 6.11 Russ and Joan Bertell dated received December 22, 2005
  - 6.12 Tony and Suzie Trotti dated received December 22, 2005
  - 6.13 Maria Yochum dated received December 29, 2005
  - 6.14 Vaughna S. Cochenour dated received January 3, 2006
  - 6.15 Rose H. Smith dated received January 4, 2006
- Exhibit 7 Email Correspondence
  - 7.1 Eric M. Bell dated March 19, 2005
  - 7.2 Lynda and Mike Betts dated April 18, 2005
  - 7.3 Carol and Frank Sampson dated July 26, 2005
  - 7.4 Jeffrey McCombs dated November 3, 2005
  - 7.5 Flo Atkinson dated December 14, 2005
- Exhibit 8 Development Agreement Graphics Exhibit